Calendar No. 602

100TH CONGRESS
2d Session

SENATE

REPORT
100–309

TAXPAYER RIGHTS AND EXCISE TAX COLLECTION PROCEDURES

REPORT

OF THE

COMMITTEE ON FINANCE
UNITED STATES SENATE

to accompany

S. 2223

MARCH 29 (legislative day, MARCH 21), 1988.—Ordered to be printed

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CONTENTS

	Page
I. Legislative Background	1
II. Explanation of the Bill	2
TITLE I—TAXPAYER BILL OF RIGHTS	2
A. Taxpayer Rights	2
1. Disclosure of rights of taxpayers (sec. 101)	2
2. Taxpayer interview procedures (sec. 102)	2
3. Taxpayers may rely on written advice of Internal Revenue Service (sec. 103)	4
4. Taxpayers assistance orders (sec. 104)	5
5. Office of Inspector General (sec. 105)	5
6. Basis for evaluation of IRS employees (sec. 106)	6
7. Procedures relating to IRS regulations (sec. 107)	7
8. Explanation of tax liability and penalties (sec. 108)	8
9. Installment payment of tax liability (sec. 109)	8
10. Assistant Commissioner for Taxpayer Services (sec. 110)	9
B. Levy and Lien Provisions	9
1. Levy and distraint (sec. 111)	9
2. Review of jeopardy levy and assessment procedures (sec. 112)	11
3. Administrative appeal of liens (sec. 113)	12
C. Proceedings by Taxpayers	13
1. Awarding of costs and certain fees in administrative and civil actions (sec. 121)	13
2. Civil cause of action for damages sustained due to failure to release lien (sec. 122)	14
3. Civil cause of action for damages sustained due to unreasonable actions by the IRS (sec. 123)	15
D. Tax Court Jurisdiction	16
1. Jurisdiction to restrain certain premature assessments (sec. 131)	16
2. Jurisdiction to enforce overpayment determinations (sec. 132)	17
3. Jurisdiction to review certain sales of seized property (sec. 133)	17
4. Jurisdiction to redetermine interest on deficiencies (sec. 134)	18
5. Jurisdiction to modify decisions in certain estate tax cases (sec. 135)	19
6. Refund jurisdiction for the Tax Court (sec. 136)	20
TITLE II—EXCISE TAX PROVISIONS	21
A. Collection and Exemption Procedures for Excise Taxes on Diesel and Nonaviation Fuels (secs. 201–203)	21
B. Modification of Distilled Spirits Wine and Flavors Credit (sec. 204)	24
C. Exception From Distilled Spirits Occupational Tax for Certain Small Plants (sec. 205)	25
D. Increase in Gas Guzzler Excise Tax (sec. 206)	26
TITLE III—MISCELLANEOUS PROVISION	26
Debt Collection: Extension of Program for IRS Collection of Non Tax Debts Owed to Federal Agencies (sec. 301)	26
III. Budget Effects of the Bill	27
IV. Regulatory Impact and Other Matters to be Discussed Under Senate Rules	28
A. Regulatory Impact	28
B. Other Matters	29
V. Changes in Existing Law Made by the Bill	29

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Mr. BENTSEN, from the Committee on Finance, submitted the following

REPORT

[To accompany S. 2223]

The Committee on Finance, to which was referred the bill (S. 2223) to promote and protect taxpayer rights, and for other purposes, having considered the same, reports favorably thereon without amendments, and recommends that the bill do pass.

I. LEGISLATIVE BACKGROUND

Committee hearings

The Finance Subcommittee on Private Retirement Plans and Oversight of the Internal Revenue Service held public hearings on April 10 and 21 and June 22, 1987, on proposed legislation relating to the rights of taxpayers in dealing with the Internal Revenue Service (S. 604 and S. 579). The Finance Committee held public hearings on certain excise tax and other proposed revenue increase provisions relating to budget reconciliation proposals on July 15, 16, and 17, 1987.

The Finance Subcommittee on Energy and Agricultural Taxation held a public hearing on March 16, 1988, on collection procedures for excise taxes on gasoline, diesel, and nongasoline aviation fuels (S. 2075, S. 2003, S. 2062, S. 2067, S. 2118, and S. 2128).

Committee markup

The Committee held public markup sessions on March 18 and 21, 1988, and approved the provisions of the bill as reported.

II. EXPLANATION OF THE BILL

TITLE I.—TAXPAYER BILL OF RIGHTS

A. TAXPAYER RIGHTS

1. Disclosure of rights of taxpayers (sec. 101 of the bill)

Present law

The Internal Revenue Service (IRS) provides information to taxpayers in various notices and publications. There is no statutory requirement that the IRS provide a written explanation of the rights of the taxpayer and the obligations of the IRS during the tax dispute resolution process.

Reasons for change

The committee believes that it would benefit taxpayers and the tax administration system if taxpayers coming into contact with the IRS understood their rights early in the dispute resolution process.

Explanation of provision

The bill requires the IRS, when it contacts a taxpayer concerning the determination of collection of any tax to provide a written explanation of the rights of the taxpayer and the obligations of the IRS during the audit, appeals, refund, and collection processes. In addition, the IRS is required to take such actions as the IRS considers necessary to ensure that taxpayers are not sent multiple statements as a result of a single audit, proposed deficiency, or collection action. The statement need not be provided with tax forms.

Effective date

The IRS must prepare the written explanation of rights of the taxpayer and obligations of the IRS not later than 180 days after the date of enactment. The written explanation may not be distributed to taxpayers until 90 days after the date it is transmitted to Congress.

2. Procedures involving taxpayer interviews (sec. 102 of the bill and new sec. 7520 of the Code)

Present law

Reasonable time and place.—The Code provides that the IRS shall select a reasonable time and place for an examination of a taxpayer. No regulations have been promulgated elaborating on this provision.

Recordings.—No statutory provision governs audio recordings of IRS interviews, although the IRS generally permits a taxpayer to make an audio recording of an interview if prior notice to the IRS is given.

IRS explanation.—The IRS has a general practice of providing written explanatory materials to taxpayers in advance of the initial audit interview.

Taxpayer representatives.—If a power of attorney has been executed properly in favor of a person eligible to practice before the IRS, the IRS permits the person to represent the taxpayer during all stages of the administrative process.

Reasons for change

The committee believes that there should be more guidance provided concerning taxpayer rights with respect to interviews conducted by the IRS. In addition, the taxpayer should have every opportunity to make use of an authorized representative in any administrative proceeding before the IRS.

Explanation of provision

Reasonable time and place.—The bill requires the IRS to publish within one year of the date of enactment regulations enumerating standards for determining whether the selection of a time and place for interviewing a taxpayer is reasonable. The committee anticipates that these regulations will provide that it is generally not reasonable for the IRS to require a taxpayer to attend an examination at an IRS office other than the one located closest to the taxpayer's home. Similarly, it is generally not reasonable for the IRS to audit a taxpayer at his or her place of business if the business is so small that doing so essentially requires the taxpayer to close the business. The committee anticipates that in determining the reasonableness of the time and place of an interview, the regulations will take into account the possibility of physical danger to an IRS agent.

Recording.—The bill permits a taxpayer, upon advance notice to the IRS, to make an audio recording of an in-person interview at the taxpayer's own expense. IRS employees also are authorized to record taxpayer interviews, provided the taxpayer receives prior notice of such recording and is supplied a copy or a transcript of the recording upon request and payment of the costs of the copy or transcript.

IRS explanation.—Prior to initial audit interviews, IRS employees must explain to taxpayers the audit process and taxpayers' rights under that process. In addition, prior to initial collection interviews, IRS employees must explain the collection process and taxpayers' rights under that process. For this purpose, routine telephone conversations initiated by either the taxpayer or the IRS are not considered initial interviews. A written statement handed to the taxpayer at an audit or collection interview or within a short time before the interview is sufficient. The explanation (whether written or oral) must provide that the taxpayer has the right to suspend the interview to consult with a qualified representative. If the taxpayer's case has been referred to the IRS Criminal Investigation Division, the IRS must notify the taxpayer of such referral at the interview.

Taxpayer representatives.—The bill provides that a taxpayer may be represented during a taxpayer interview by any attorney, certified public accountant, enrolled agent, enrolled actuary, or any other person permitted to represent a taxpayer before the IRS, who is not disbarred or suspended from practice before the IRS and who

has a properly executed power of attorney from the taxpayer. Thus, the taxpayer may be represented by anyone authorized to do so under Circular 230.

If a taxpayer clearly states during an interview with the IRS that the taxpayer wishes to consult with that representative, the interview must be suspended to afford the taxpayer a reasonable opportunity to consult with the representative. Absent an administrative summons, a taxpayer cannot be required to accompany the representative to an interview. The committee intends that this suspension procedure be available to facilitate taxpayer's access to their representatives and not to delay needlessly the interview process. The committee intends that in instances of abuse of this process (such as repeated suspension of interviews to contact different representatives) the IRS will issue an administrative summons.

The IRS may notify a taxpayer that the taxpayer's representative is responsible for unreasonable delay or hinderance, request that the taxpayer appear for an interview, and inform the taxpayer that an administrative summons requiring the taxpayer's attendance at an interview may be issued.

The provisions of the bill relating to taxpayer interviews do not apply to criminal investigations or investigations relating to the integrity of any officer or employee of the IRS.

Effective date

The provisions relating to taxpayer interviews apply to interviews conducted on or after the date that is 30 days after the date of enactment.

3. Taxpayers may rely on written advice of the Internal Revenue Service (sec. 103 of the bill and sec. 6404 of the Code)

Present law

The IRS may abate administratively some penalties in a variety of circumstances.

Reasons for change

The committee believes that taxpayers should not be penalized for following erroneous written advice furnished by the IRS where the taxpayer provided accurate information in requesting the advice and reasonably relied upon the advice.

Explanation of provision

The bill requires the IRS to abate any portion of any penalty or addition to tax that is attributable to erroneous written advice furnished by the IRS to a taxpayer, where such advice was specifically requested in writing by the taxpayer and reasonably relied upon, unless the taxpayer failed to provide adequate or accurate information when requesting the advice. The committee intends that this provision not be construed to require the IRS to provide written advice to taxpayers.

Effective date

The provision is effective for advice requested on or after the date of enactment.

4. Taxpayer assistance orders (sec. 104 of the bill and new sec. 7811 of the Code)

Present law

The Taxpayer Ombudsman administers the IRS Problem Resolution Program, which is designed to resolve a wide range of tax administration problems that are not remedied through normal operating procedures or administrative channels. The Ombudsman cannot resolve disputes involving substantive issues of the tax law.

Reasons for change

The committee believes that there should be statutory authority for the Taxpayer Ombudsman to act upon behalf of taxpayers.

Explanation of provision

The bill provides the Taxpayer Ombudsman (or any designee of the Ombudsman) with the authority to issue a taxpayer assistance order, if, in the determination of the Ombudsman, the taxpayer is suffering or about to suffer a significant hardship as a result of the manner in which the IRS is administering the internal revenue laws. The Ombudsman may take action whether or not a taxpayer has filed an application requesting relief. A taxpayer assistance order may require remedial actions, such as release from levy of property of the taxpayer. A taxpayer assistance order is binding on the IRS unless modified or rescinded by the Ombudsman, a district director, or any superior of a district director.

Under the bill, any applicable statute of limitations (e.g., the statute of limitation under sec. 6501 relating to the assessment or collection of tax) is suspended starting on the date that the taxpayer files an application for a taxpayer assistance order with the Ombudsman and ending on the date that the Ombudsman makes a decision on the taxpayer's application (or a later date if the Ombudsman's order resulting from a taxpayer's application provides for continued suspension of the statute of limitations). The statute of limitations is not suspended in cases where the Ombudsman issues an order in the absence of an application for relief by the taxpayer.

The bill requires the IRS to issue regulations within 90 days of the date of enactment to implement this provision.

Effective date

This provision is effective on the date of enactment.

5. Office of Inspector General (sec. 105 of the bill)

Present law

The Treasury Department has a nonstatutory Inspector General with internal audit and investigative responsibilities for the Department, except for its four law enforcement agencies: IRS, Secret

Service, Customs Service, and the Bureau of Alcohol, Tobacco, and Firearms. These functions are performed at the IRS by the Inspection Division, which reports directly to the IRS Commissioner.

Reasons for change

The committee believes that it would be beneficial to have a statutory Inspector General at the IRS to provide oversight of the agency.

Explanation of provision

The bill establishes a statutory Inspector General within the IRS. In addition, the bill establishes a separate statutory Inspector General within the Treasury Department to provide general oversight over all other agencies within the Treasury Department. The IRS Inspector General is to be appointed by the President from a small pool of senior career personnel at the IRS with demonstrated ability in investigative techniques or internal audit functions. The Inspector General office for the IRS is to incorporate the existing IRS Inspection Division. The IRS Inspector General is not empowered to change determinations relating to a taxpayer's liability, and is to be under the direction and control of the IRS Commissioner with respect to matters requiring access to certain sensitive information, such as ongoing criminal investigations and deliberations on policy matters. If the Commissioner exercises the authority to prohibit an audit or investigation in order to prevent disclosure of sensitive information, the Commissioner must so notify the IRS Inspector General in writing and the IRS Inspector General must transmit a copy of the notice to appropriate committees of Congress.

Effective date

The provision is effective on the date of enactment.

6. Basis for evaluation of IRS employees (sec. 106 of the bill)

Present law

The IRS Manual prohibits the use of production quotas or goals based upon sums collected to evaluate IRS enforcement officers, appeals officers, and reviewers.

Reasons for change

The committee believes that it is inappropriate to use enforcement statistics in evaluating individual enforcement officers, appeals officers, and reviewers.

Explanation of provision

The bill prohibits the IRS from using records of tax enforcement results to evaluate enforcement officers, appeals officers, and reviewers or to impose or suggest production quotas or goals. The IRS will not be treated as failing to meet the requirements of this provision if it uses these records in accordance with IRS Policy Statement P–1–20, as in effect upon enactment of this provision, provided that it does so in a manner that does not violate the general

prohibition provided for by this provision. Each district director must certify quarterly that enforcement results are not being used in a prohibited manner.

Effective date

This provision is effective for evaluations conducted on or after the date of enactment.

7. Procedures relating to IRS regulations (sec. 107 of the bill and sec. 7805 of the Code)

Present law

The IRS publishes all regulations in the Federal Register. Before final regulations are promulgated, proposed regulations are issued. Proposed regulations invite comments from the public and Government agencies. The IRS also issues some regulations as temporary regulations. Generally, temporary regulations are effective immediately upon publication and remain in effect until replaced by final regulations. When the IRS issues temporary regulations, it generally also issues those same regulations in proposed form by cross-reference.

Reasons for change

The committee is concerned that regulations promulgated by the IRS may have an impact on small businesses that should be taken into account before the regulations are published. The committee is also concerned about the length of time that some regulations remain in temporary form.

Explanation of provision

The bill requires the IRS to solicit comments from the Small Business Administration (SBA) after the publication of proposed regulations or before the promulgation of final regulations. The SBA is allowed four weeks after the receipt of the regulations to provide its comments on the impact of the regulations on small businesses.

In addition, each time the IRS issues temporary regulations, the IRS must simultaneously issue those regulations in proposed form. The IRS may continue its present practice of issuing proposed regulations by cross-reference at the time temporary regulations are issued. Temporary regulations are permitted to remain in effect for no more than two years after the date of their issuance. The expiration of temporary regulations at the end of this two-year period is not to effect the validity of those regulations during the two-year period.

Effective date

This provision is effective for regulations issued after the date of enactment.

8. Explanation of tax liability and penalties (sec. 108 of the bill and new sec. 7521 of the Code)

Present law

The Code does not specify the content of the statutory notice of deficiency. The IRS generally explains the basis of a tax deficiency in the notice, but there is no requirement in IRS regulations that the IRS explain the basis for assessing penalties.

Reasons for change

The committee believes that the IRS should provide as much information as possible to taxpayers as early as possible in the administrative process. In this manner, taxpayers can respond promptly and usefully to contacts by the IRS and assert their positions more effectively. Moreover, the committee is aware that the reasons that the IRS assets penalties are not alwasy clear to taxpayers.

Explanation of provision

The bill requires all tax due notices or deficiency notices to contain both a description of the basis for, and an identification of the amounts (if any) of, tax due, interest, additions to tax, and penalties. An inadequate description in a notice of deficiency or tax due will not, by itself, invalidate the notice. In addition, in the case of interest accruing with respect to amounts described in a notice of deficiency, it is sufficient if the notice states that interest at the legal rate is owing on the amount due.

Effective date

The provision applies to mailing made after the date that is 180 days after the date of enactment.

9. Installment payment of tax liability (sec. 109 of the bill and new sec. 6159 of the Code)

Present law

The IRS is not required to enter into installment payment agreements with taxpayers, but generally does so if a taxpayer who is unable to pay the delinquency in full is able to make payments on the delinquent taxes and pay current taxes as they become due. A change in the taxpayer's financial condition may result in modification of the installment payment agreement.

Reasons for change

The committee believes that the Code should provide standards relating to the termination of installment agreements executed by the IRS. This will provide taxpayers a degree of predictability with respect to their financial obligations to the IRS.

Explanation of provision

The bill grants the IRS statutory authority to enter into a written installment payment agreement if the IRS determines that an agreement will facilitate collection of the tax owed. The agreement is to remain in effect for the term of the agreement unless (1) the taxpayer provided inaccurate or incomplete information, (2) the taxpayer fails to pay an installment when due, (3) the taxpayer fails to pay any other tax liability when due, (4) the taxpayer fails to respond to any reasonable request by the IRS to supply updated financial information, or (5) the IRS determines that the collection of any tax to which an agreement relates is in jeopardy.

In addition, the IRS may alter, modify or terminate an installment payment agreement if the IRS determines that the financial condition of the taxpayer has significantly changed. This action may be taken only if the IRS notifies the taxpayer of the determination at least 30 days prior to the date of the action and provides the reason for such determination in the notification.

Effective date

This provision is effective for installment agreements entered into after the date of enactment.

10. Assistant Commissioner for Taxpayer Services (sec. 110 of the bill and sec. 7802 of the Code)

Present law

There is currently within the IRS an Assistant Commissioner (Taxpayer Services and Returns Processing). This position is not provided by statute.

Reasons for change

The committee believes that it is important to provide statutorily for an IRS manager to be responsible for taxpayer services.

Explanation of provision

The bill establishes an Assistant Commissioner for Taxpayer Services who, jointly with the Taxpayer Ombudsman, must annually report to the Congress concerning the quality of taxpayer services provided by the IRS.

Effective date

This provision is effective on the date of enactment.

B. LEVY AND LIEN PROVISIONS

1. Levy and distraint (sec. 111 of the bill and secs. 6331, 6332, 6334, and 6343 of the Code)

Present law

Notice.—At least 10 days before collecting a tax by levy (i.e., seizure of the taxpayer's property) the IRS must provide the taxpayer written notice of its intent to levy. If the IRS finds that collection

of tax is in jeopardy, it may collect the tax by levy without providing this notice or waiting 10 days.

Property subject to levy.—Property subject to levy includes any property (or rights to property being held by others) belonging to the taxpayer, except property specifically excluded from levy by law, which includes (1) fuel, provisions, furniture, and personal household effects, not exceeding $1,500 in aggregate value; and (2) books and tools necessary for the trade, business, or profession of the taxpayer, not exceeding $1,000 in aggregate value.

Levy on wages.—The IRS may instruct the taxpayer's employer to pay directly to the IRS amounts otherwise payable to the taxpayer as wages, except (1) so much of the wages of the taxpayer as is necessary to comply with a prior judgment of a court for support of any minor children of the taxpayer, and (2) a minimum amount of wages or other income (in general, $75 per week plus $25 per week for each dependent).

Release of levy.—The IRS has authority to release a levy if it determines that this will facilitate the collection of tax.

Reasons for change

The committee believes that it is appropriate to extend the time period between the date notice of intent to levy is provided to taxpayers and the date that levy can be made. The committee also believes that it is appropriate to expand the scope of property exempt from levy.

Explanation of provision

Notice.—The period from the date the IRS provides written notice to a taxpayer to the first permissible date of the collection of tax by levy is extended to 30 days. As under present law, the notice and waiting period requirements do not apply if the IRS finds that collection of the tax is in jeopardy. The notice preceding levy is required to contain a description of Code provisions and administrative procedures and appeals applicable to specific aspects of collection, as well as a description of the alternatives available to taxpayers that may prevent levy on taxpayers' property.

Property subject to levy.—The bill contains several modifications to the provisions relating to the types of property exempt from levy. First, the $1,500 exemptions from levy for fuel, provisions, furniture, and personal household effects is to be indexed for inflation through 1990. Second, the $1,000 exemption from levy for books, tools, machinery, or equipment that are necessary for the trade, business, or profession of the taxpayer is also to be indexed for inflation through 1990. Third, the bill exempts from levy a taxpayer's principal residence and tangible personal property essential to the taxpayer's trade or business, unless an IRS district director or assistant director personally approves the levy in writing or the collection of the tax is found to be in jeopardy. For this purpose, property is essential business property only if the business of the taxpayer cannot continue without it. Fourth, no levy may be made on property if the estimated expenses of levy and sale exceed the fair market value of the property.

The bill prohibits the IRS from leving on property of any person on the day on which the person is required to appear in response to a summons issued by the IRS, unless the IRS determines that the collection of tax is in jeopardy. In addition, under the bill, banks and other financial institutions are required to hold accounts garnished by the IRS for 21 days after receiving the IRS notice of levy, in order to provide taxpayers an opportunity to notify the IRS of errors with respect to garnished accounts. Any interest accruing on the accounts during the 21-day period is to be surrendered to the IRS at the end of the 21-day period. The levy on any account may be released before the expiration of the 21-day period with the permission of the IRS.

Levy on wages.—The amount of wages exempt from levy for each week is increased by the bill to an amount equal to the taxpayer's standard deduction and personal exemptions allowable for the taxable year in which the levy occurs, divided by 52.

Release of levy.—The IRS must release a levy on property if (1) the liability for which the levy was made is satisfied, (2) the IRS determines that release will facilitate the collection of the liability, (3) an installment payment agreement has been executed with respect to such liability, (4) the IRS has determined that the levy is creating an economic hardship due to the taxpayer's financial condition, or (5) the fair market value of the property exceeds the liability and partial release would not hinder collection of the tax and related costs owed to the IRS. The release of a levy under this provision is not to prevent a subsequent levy on the same property.

Effective date

The provision is effective for levies issued after the date that is 90 days after the date of enactment.

2. Review of jeopardy levy and assessment procedures (sec. 112 of the bill and sec. 7429 of the Code)

Present law

Assessment of a tax (i.e., recording of the tax liability in the office of the District Director) is the final act by the IRS that establishes the liability of a taxpayer for a tax. After assessment, the IRS will attempt to collect the tax. The Code authorizes the IRS to make a jeopardy assessment (i.e., to immediately assess and demand payment of a tax and any penalties and interest) where collection would be endangered if regular procedures are followed. Furthermore, if the IRS determines that collection of tax would be jeopardized by waiting the regular 10-day period after notice and demand for payment have been provided to the taxpayer, the IRS can collect the tax by jeopardy levy (i.e., immediately seize certain of the taxpayer's property). The Code provides special rules relating to administrative review and judicial review (by Federal district courts) of jeopardy assessments. These rules do not apply to jeopardy levies.

Reasons for change

The committee believes that it would benefit taxpayers to permit special review of jeopardy levies in addition to jeopardy assessments.

Explanation of provision

The existing rules relating to the review of jeopardy assessments are extended to the review of jeopardy levies. The Tax Court is provided jurisdiction concurrent with Federal district courts with respect to the challenges to a jeopardy assessment or jeopardy levy if the taxpayer has filed a petition with the Tax Court prior to the making of the assessment or levy with respect to any deficiency covered by the jeopardy assessment or jeopardy levy notice. In all other cases, the appropriate district court continues to have exclusive jurisdiction over such an action.

Effective date

The provision applies to jeopardy levies issued and jeopardy assessments made after the date of enactment.

3. Administrative appeal of liens (sec. 113 of the bill and new sec. 6326 of the Code)

Present law

A taxpayer can obtain a review within the IRS of an initial determination of tax deficiency before the matter proceeds to collection. There is no statutory procedure for the administrative appeal of IRS decisions concerning the collection of a tax liability.

Reasons for change

The committee believes that effective administrative procedures should be provided to facilitate the correction of errors made by the IRS during the collection process.

Explanation of provision

The bill requires the IRS to promulgate regulations within 180 days after enactment that provide taxpayers with an administrative procedure to obtain review of the filing of a notice of lien in the public record and an opportunity to petition for the release of such lien. The committee intends that this administrative procedure be used to correct erroneous filings and not to challenge the underlying deficiency leading to the imposition of a lien.

If the IRS determines that filing of a notice of lien was erroneous (i.e., the tax liability that gave rise to the lien had been satisfied or the liability had been assessed in violation of the restrictions on assessment in section 6213 pertaining to deficiency assessments or in Title 11), the IRS is required to immediately issue a certificate of release of the lien and include in the certificate a statement that the filing of the lien was erroneous. This certificate of release of an erroneous lien must be issued whether or not the lien was challenged in an administrative review procedure.

Effective date

The provision is effective on the date of enactment.

C. PROCEEDINGS BY TAXPAYERS

1. Awarding of costs and certain fees in administrative and civil actions (sec. 121 of the bill and sec. 7430 of the Code)

Present law

Reasonable costs.—Any person who is a "prevailing party" in a tax case in any Federal court may be awarded reasonable litigation costs, including attorneys fees (generally limited to $75 per hour), expenses of expert witnesses, and court costs. Costs incurred during the IRS administrative process generally are not recoverable.

Burden of proof.—In order to obtain reasonable litigation costs, the person must establish that the position of the United States in the case was not substantially justified. In addition, the person must substantially prevail with respect to the amount in controversy or the most significant issue(s) in the case.

Position of the United States.—In determining whether the position of the United States was substantially justified, the position of the United States is determined beginning with the position in the civil proceeding, or, if applicable, the position taken by the IRS district counsel administratively. This generally does not include positions taken in the audit or appeals processes.

Administrative settlement of claims for litigation costs.—The Code does not provide explicit authority to the IRS to settle administratively claims for litigation costs prior to the commencement of the civil action.

Reasons for change

The committee believes that modifications to the rules governing awards of litigation costs will ensure that the Government adopts positions that are substantially justified in Federal tax controversies.

Explanation of provision

Recoverable costs.—Any person who substantially prevails in any action brought by or against the United States in connection with the determination, collection, or refund of any tax, interest, or penalty may be awarded reasonable administrative costs incurred before the IRS and reasonable litigation costs incurred in connection with any court proceeding.

For this purpose, reasonable litigation costs are defined as under current law, while reasonable administrative costs include (1) any administrative fees or similar charges imposed by the IRS, (2) reasonable expenses of expert witnesses, (3) the reasonable cost of any study, analysis, engineering report, test or project that is necessary for the preparation of the person's case, and (4) reasonable fees (generally not to exceed $75 per hour) paid or incurred for the services of a qualified representative of the taxpayer in connection with the administrative action, but only if such administrative costs are incurred after the earlier of (1) the date of the first notice of pro-

posed deficiency (generally the 30-day letter) that allows the person an opportunity for administrative review in the IRS Office of Appeals, or (2) the date of the notice of deficiency described in section 6212 of the Code.

As under present law, a judgment for reasonable litigation costs shall not be awarded by a court unless the taxpayer has exhausted administrative remedies.

Burden of proof.—The burden of proof with respect to whether the position of the United States was substantially justified is shifted to the Government, so that if a taxpayer substantially prevails with respect to the amount in controversy or the most significant issue(s) in the case, the Government then must establish that its position was substantially justified in order to prevent the taxpayer from recovering costs.

Position of the United States.—In determining whether the position of the United States was substantially justified, the position of the United States is determined as of the later of (1) the date of the first letter of proposed deficiency (generally the 30-day letter) that allows the taxpayer an opportunity for administrative review in the IRS Appeals Office (or, if no letter of proposed deficiency is sent, the date of the notice of deficiency described in section 6212 of the Code), or (2) the date by which the relevant evidence under the control of the taxpayer, as well as relevant legal arguments, with respect to such action have been presented by the taxpayer to IRS examination or Service Center personnel.

Thus, in the case of a computer-generated underreporter notice (i.e., a Form CP–2000), the position of the United States generally is determined only after the taxpayer has provided the IRS with sufficient information to enable a reasonable person to determine whether the notice should have been used. For example, if the computer-generated notice proposes a deficiency due to the failure to report interest income shown on a Form 1099–INT filed by a third party, the position of the United States is not to be determined until after the taxpayer provides sufficient information to establish whether the interest should have been reported on the tax return of the taxpayer who received the deficiency notice.

Administrative settlement of claims for administrative costs and litigation costs.—The bill provides the IRS with the authority to settle claims for administrative costs and litigation costs. A decision by the IRS granting or denying an award of costs is appealable to the Tax Court under the small case procedures.

Effective date

The provision applies to actions commenced after the date of enactment.

2. Civil cause of action for damages due to failure to release lien (sec. 122 of the bill and new sec. 7432 of the Code)

Present law

The Code does not grant taxpayers a right to bring an action for damages resulting from the wrongful failure to remove a lien on a taxpayer's property.

Reasons for change

The committee believes that an additional civil cause of action is warranted to compensate taxpayers for damages arising out of the wrongful failure of an IRS employee to release a lien.

Explanation of provision

The bill provides taxpayers with the right to sue the Federal Government in Federal district court or Tax Court if any IRS employee knowingly or negligently fails to release a lien on the taxpayer's property as required under the Code. Taxpayers may recover the costs of the action and damages equal to the greater of (1) the actual direct economic damages sustained by the taxpayer which, but for the actions of the IRS, would not have been sustained, or (2) $100 per day (up to $1000) for each day the failure continues during the period that begins ten days after the taxpayer provides written notice to the IRS of the failure to release the lien. This written notice must be provided by the taxpayer after the conclusion of the 30-day period during which the IRS is required to release the lien. The IRS is authorized to establish reasonable requirements concerning the form and manner of the written notice. The committee anticipates that the requirements imposed by the IRS with respect to the written notice will require only information concerning the name and taxpayer identification number of the taxpayer, information concerning the type and location of the property subject to the lien, and any information that is necessary to establish that the lien should be released.

The IRS has authority to settle administratively claims under this provision. A judgment for damages under this provision may not be awarded by a court unless the taxpayer has exhausted administrative remedies. In addition, the actual economic damages recoverable by a taxpayer are to be reduced to the extent that the damages could reasonably have been mitigated by the taxpayer. Taxpayers have two years after discovery of an erroneous failure by the IRS to release a lien in which to bring an action under this provision.

Effective date

This provision applies to taxpayer notices provided and damages arising after the date of enactment.

3. Civil cause of action for damages due to unreasonable action by the IRS (sec. 123 of the bill and new sec. 7433 of the Code)

Present law

Taxpayers do not have a specific right to bring an action against the Government for damages sustained due to unlawful actions taken by an IRS employee.

Reasons for change

The committee believes that taxpayers should be provided a civil cause of action to compensate them for damages that arise out of

unlawful actions or inaction of IRS employees that occur during the determination or collection of Federal taxes.

Explanation of provision

The bill provides taxpayers with the right to sue the Federal Government in Federal district court or Tax Court for damages if in connection with the determination or collection of any Federal tax, an officer or employee of the IRS carelessly, recklessly, or intentionally disregards any provision of Federal law or any regulation promulgated under the Internal Revenue Code. The taxpayer may recover the costs of the action plus actual direct economic damages sustained by the taxpayer as a proximate result of the unlawful actions or inaction of the IRS employee.

A taxpayer may not recover under this provision if the taxpayer was contributorily negligent. In addition, the damages recoverable under this provision are to be reduced to the extent that the damages could reasonably have been mitigated by the taxpayer.

The IRS has authority to settle administratively claims under this provision. A judgment for damages under this provision may not be awarded by a court unless the taxpayer has exhausted administrative remedies. A taxpayer's claim under this provision is barred unless the action is commenced within two years after the discovery by the taxpayer of the improper IRS action. If the Tax Court or district court determines that the taxpayer's lawsuit is frivolous or groundless, the court may impose a penalty on the taxpayer of up to $10,000.

Effective date

The provision applies to actions of IRS officers or employees that occur after the date of enactment.

D. TAX COURT JURISDICTION

1. Jurisdiction to restrain certain premature assessments (sec. 131 of the bill and secs. 6213 and 7482 of the Code)

Present law

Jurisdiction to restrain IRS assessment and collection of tax rests solely with the Federal district courts. Consequently, even though as a general rule no assessment or collection of tax may be made until the decision of the Tax Court has become final, a taxpayer with a case before the Tax Court who is faced with a premature IRS assessment is forced to challenge that assessment in Federal district court.

Reasons for change

The committtee believes that generally both taxpayers and the Government are well served by permitting related issues to be litigated in the same forum.

Explanation of provision

The bill provides the Tax Court with jurisdiction (concurrent with Federal district courts) to restrain the assessment and collection of any tax by the IRS if the tax is the subject of a timely filed petition pending before the Tax Court.

Effective date

The provision applies to orders entered after the date of enactment.

2. Jurisdiction to enforce overpayment determinations (sec. 132 of the bill and sec. 6512 of the Code)

Present law

The Tax Court has jurisdiction to determine that a taxpayer is due a refund of a tax for which the IRS has asserted a deficiency. However, if the IRS fails to refund an overpayment determined by the Tax Court, the taxpayer must seek relief in another court.

Reasons for change

The committee believes that if the Tax Court determines that a taxpayer is due a refund and the IRS fails to issue that refund, the taxpayer should not have to incur the additional time, trouble, and expense of enforcing the Tax Court's decision in another forum. Rather, the taxpayer should be able to enforce the decision in the court that entered the decision.

Explanation of provision

The bill grants the Tax Court jurisdiction to order the refund of an overpayment plus interest if, within 120 days after a Tax Court decision has become final, the IRS fails to refund to a taxpayer an overpayment determined by the Tax Court. If the IRS does not establish that its failure to refund an overpayment was substantially justified, then the taxpayer is entitled to interest on the overpayment at 120 percent of the overpayment interest rate.

Effective date

The provision applies to overpayments determined by the Tax Court which have not been refunded by the 90th day after the date of enactment.

3. Jurisdiction to review certain sales of seized property (sec. 133 of the bill and sec. 6863 of the Code)

Present law

If a taxpayer fails to pay a tax on notice and demand after the IRS makes a jeopardy assessment, a lien arises in favor of the United States upon property belonging to the taxpayer and the IRS can immediately seize the taxpayer's property. Pending issuance of a notice of deficiency, and, if the taxpayer challenges the assessment in either the Tax Court or Federal district court, pending the

decision of such court, the IRS cannot sell property seized pursuant to a jeopardy assessment, unless (1) the taxpayer consents to the sale, (2) the IRS determines that the expenses of conservation and maintenance will greatly reduce the net proceeds, or (3) the property is liable to perish or become greatly reduced in value by keeping, or cannot be kept without great expense. If the taxpayer wishes to contest an IRS determination to sell seized property, the only recourse is to bring suit in Federal district court.

Reasons for change

The committee believes that both taxpayers and the IRS will benefit by the availability of an additional forum for review of IRS decisions to sell seized property.

Explanation of provision

The bill grants the Tax Court jurisdiction during the pendency of proceedings before it to review the IRS' determination to sell seized property under one of the present-law exceptions to the stay of sale.

Effective date

The provision is effective on the 90th day after the date of enactment.

4. Jurisdiction to redetermine interest on deficiencies (sec. 134 of the bill and sec. 7481 of the Code)

Present law

Following a decision by the Tax Court, the IRS assesses the entire amount redetermined as the deficiency by the Tax Court and adds to the deficiency interest computed at the statutory rate. If the taxpayer disagrees with the IRS' interest computation, however, the Tax Court does not have jurisdiction to resolve that dispute.

Reason for change

The committee believes that both the taxpayer and the IRS would benefit from permitting the Tax Court to resolve disputes concerning the IRS' computation of interest on a deficiency.

Explanation of provision

If a dispute arises over the IRS' computation of the interest due on a deficiency, then within one year from the date the Tax Court decision becomes final the taxpayer may move to reopen the Tax Court proceeding for a determination of interest due. The taxpayer is required to pay the entire deficiency redetermined by the Tax Court and the interest determined by the IRS before challenging the IRS' computation of interest in the Tax Court.

Effective date

The provision applies to assessments of deficiencies made after the date of enactment.

5. Jurisdiction to modify decisions in certain estate tax cases (sec. 135 of the bill and sec. 7481 of the Code)

Present law

The Code allows a deduction against either the estate tax or the income tax for interest paid by an estate on a Federal or State estate tax liability during the period the estate is being administered. In addition, the Code allows certain estates which consist largely of an interest in a closely held business to elect to pay Federal estate tax over an extended-payment period. The IRS has taken the position that, because an estate may accelerate the payment of Federal or State estate taxes during an extended-payment period, an estate is not entitled to a deduction for interest anticipated to be paid during the extended-payment period but is entitled to a deduction only when such interest is actually paid by the estate. Consequently, because the amount of the estate tax deduction for interest to which an estate is entitled cannot be determined until the interest is paid, the Tax Court may not enter a final judgment in an estate tax case until the extended-payment period has expired.

Reasons for change

The committee believes that the Tax Court should be granted statutory authority to modify a final judgment in an estate tax case in which an extended-payment period is elected in order to reflect the deduction of interest paid during the extended-payment period on the Federal or State estate tax liability.

Explanation of provision

The bill grants the Tax Court authority to modify a final decision in an estate tax case solely to reflect the estate's entitlement to a deduction for interest paid during an extended-payment period on the Federal or State estate tax liability. Thus, the Tax Court may enter a final decision in an estate tax case in which an extended-payment period is elected and subsequently, if necessary, modify the decision at the end of the extended-payment period to reflect interest actually paid by the estate. The Tax Court has discretion to hold a hearing on this matter at the end of the extended-payment period.

Effective date

The provision applies to Tax Court cases for which the decision is not final on the date of enactment.

6. Refund jurisdiction for the Tax Court (sec. 136 of the bill and sec. 7442 of the Code)

Present law

When a taxpayer receives notice from the IRS that it has determined a deficiency of tax, the taxpayer may, before paying the determined liability, petition the Tax Court for a redetermination of the deficiency within 90 days after the notice of deficiency was mailed. Alternatively, the taxpayer may pay the deficiency and file a claim for refund of the disputed amount with the IRS. If the IRS rejects the refund claim, or does not act within six months, then the taxpayer may bring an action for refund in Federal district court or the United States Claims Court, but not the Tax Court.

A taxpayer may also file with the IRS a claim for refund of an overpayment not attributable to a deficiency, and if the refund claim is rejected by the IRS, then the taxpayer may bring an action in Federal district court or the United States Claims Court seeking a refund of the asserted overpayment. The Tax Court has no jurisdiction to determine whether a taxpayer has made an overpayment except in the context of a deficiency proceeding.

Reasons for change

The vast majority of Federal tax litigation originates in the Tax Court; at present, more than 70,000 cases are docketed in the Tax Court, compared to fewer than 3,000 tax cases in all of the district courts and the Claims Court combined. The development of the small tax case procedure has also been a great advantage to many taxpayers who have disputes with the Internal Revenue Service involving relatively modest sums; speedy resolution of these disputes without the necessity of incurring substantial litigation costs contributes to both the perceived fairness and the actual fairness of the tax system. For all of these reasons, the Tax Court is the forum of choice for many taxpayers who have disputes with the IRS.

The committee believes that these advantages of Tax Court litigation should be extended to certain refund claims of taxpayers.

Explanation of provision

The bill grants the Tax Court jurisdiction over tax refund actions against the IRS, including both refund actions arising out of a taxpayer's payment of a deficiency asserted by the IRS and refund actions arising out of overpayments not attributable to a deficiency. The general prerequisites governing the commencement of tax refund actions apply to refund actions filed in the Tax Court. A taxpayer continues to have the option of filing a claim for refund in the appropriate Federal district court or the United States Claims Court.

The committee expects that the Tax Court will modify its discovery procedures for these refund cases. Litigation concerning a deficiency generally occurs only after the IRS has audited the taxpayer. Audits often do not occur, however, in the context of claims for refunds. Therefore, the committee believes that more extensive discovery rules will be necessary in the context of litigation concern-

ing a refund than are necessary in the context of deficiency litigation.

Effective date

The provision applies to proceedings commenced in Tax Court six months after the date of enactment.

TITLE II.—EXCISE TAX PROVISIONS

A. COLLECTION AND EXEMPTION PROCEDURES FOR EXCISE TAXES ON DIESEL AND NONGASOLINE AVIATION FUELS (SECS. 201–203 OF THE BILL AND SECS. 4091, 4092, 4093, 6427(d), AND 6427(i) OF THE CODE)

Present law

Post-March 31, 1988

Effective after March 31, 1988, the excise taxes on diesel and nongasoline aviation fuels ("jet fuel") will be imposed on the sale of those fuels by a producer, or use of the fuels if before payment of tax otherwise is made (secs. 4091–4093). The term producer is defined to include wholesale distributors as well as refiners and certain other intermediate persons (other than retailers) in the chain of distribution of these fuels. All producers of taxable fuels must register with the Treasury Department and satisfy such bonding requirements as Treasury prescribes.

Exemptions from these taxes are provided for several specified uses. In the case of diesel fuel, exemptions are provided for, *Inter alia*—

(1) Use exclusively by States and local governments;
(2) Use on a farm for farming purposes;
(3) Use by an educational organization exempt from income tax under Code section 501(c)(3);
(4) Use by certain aircraft museums; and
(5) Use other than as a fuel in a highway vehicle.

The tax on nongasoline aviation fuel applies only to such fuels used in noncommercial (general) aviation, defined as aircraft use other than the carrying of passengers or freight for hire.

Effective on and after April 1, 1988, most exemptions from these fuels taxes will be realized through refunds. Thus, tax generally will be imposed on all sales with the ultimate user of fuel used for an exempt purpose claiming a refund from the Treasury Department. These refunds may be claimed in either of two ways. First, a credit against the user's income tax is permitted (sec. 34). Second, a person entitled to a refund of $1,000 or more during any one of the first three calendar quarters of a year may file a claim for refund of tax paid during that quarter (sec. 6427). Third, States and nonprofit users may file claims for refund annually without regard to the amount of tax for which the claim is made (or quarterly subject to the $1,000 threshold).

The Treasury Department is authorized to establish procedures for permitting sales without payment of tax, on a case-by-case basis, for certain uses where the purchaser demonstrates to Treasury's satisfaction that the fuel will be used in a nontaxable use and

also registers and satisfies such financial responsibility requirements as Treasury may require. Sales that are exempt from tax include only direct sales by a producer to an ultimate user for exempt use. These sales are permitted only in the case of (1) diesel fuel sold for use as fuel in a diesel-powered train; (2) aviation fuel sold for use as fuel in an aircraft in commercial aviation; (3) taxable fuels sold for industrial use other than as a motor fuel (i.e., as a chemical feedstock); and (4) taxable fuels sold for the exclusive use of any State or local government. An additional exemption permits diesel fuel that Treasury determines is destined for use as heating oil to be sold without payment of the fuels tax.

These provisions were adopted as part of the Omnibus Budget Reconciliation Act of 1987.

Pre-April 1, 1988

Before April 1, 1988, the excise taxes on diesel fuel and nongasoline aviation fuels are imposed on the retail sale (or earlier taxable use) of these fuels. In general, exemptions from these taxes are realized through tax-free sales, rather than through refunds or credits.

Reasons for change

Following public hearings, the committee determined that the 1987 Act rules with respect to collection procedures for the diesel and nongasoline aviation fuels excise taxes for users that are exempt from the taxes should be modified in order to lessen the administrative burden of the excise tax refund procedures for such exempt users. The committee concluded that the tax-free purchase procedures for such fuels available for trains, commercial airlines, and State and local governments should be expanded generally to all exempt users in off-highway business uses (e.g., for use on a farm).

In order to maintain compliance, the committee decided that sales to an exempt user may be made without payment of tax only when the parties to the sale satisfy Treasury-prescribed bonding and registration requirements. Also, only sales that are direct from a producer (including a wholesales distributor) to the exempt user will qualify under these rules. To further reduce the potential for evasion of the fuels taxes as a result of expanding the number of persons qualifying for exempt sales, the committee agreed to require reporting procedures by both sellers and exempt purchasers.

To alleviate the burden on off-highway business exempt users who continue to purchase diesel fuel tax-paid from retailers, the committee agreed to liberalize the refund procedures applicable to such purchasers by reducing the quarterly refund threshold and paying interest on such refunds.

Explanation of provisions

Expansion of persons eligible to purchase diesel fuel with payment of tax

In general

The bill makes mandatory and extends the current provisions allowing commercial airlines, railroads, and certain others to purchase diesel and nongasoline aviation fuels without payment of tax to all off-highway business users for which an exemption is provided. Additionally, buses currently eligible for a full or partial refund of the diesel fuel tax are permitted to purchase the fuel without payment of tax under these same rules.

Under these rules, exempt users may purchase these fuels without payment of tax when they purchase in bulk directly from a producer (including a wholesale distributor) and when Treasury-presribed registration and financial responsibility requirements are satisfied. For marine users, the bill treats as producers for this purpose retail dealers who sell diesel fuel at a facility exclusively serving waterway users.

Compliance measures

To curb the potential for increased tax evasion arising from expanding the number of persons qualifying for exempt sales, the bill directs the Treasury Department to issue regulations specifying reporting requirements on both sellers and exempt purchasers. Under these rules it is anticipated that all producers selling diesel and nongasoline aviation fuel to an exempt user without payment of tax must submit to the Treasury Department, at least annually, a list of the names and addresses of, and volume of sales to each, exempt user. This same information must be reported by the seller to each exempt purchaser (with respect to that person's purchases).

Further, the exempt users must at least annually submit this information to the Treasury Department, with a cetification that all exempt purchases were used in off-highway business use, intercity bus use, or by a State or local government or an exempt nonprofit education organization. The committee intends that Treasury minimize additional paperwork burdens on exempt users while achieving to the maximum extent possible the compliance objectives of the provision. Thus, this submission be exempt users generally should be made by means of additional information included on currently required income tax returns (e.g., on Schedule F for individual farmers.)

The committee wishes to stress that inclusion of these specific reporting requirements is not intended to limit in any way Treasury's current authority to require information reporting by all persons in the distribution chain of diesel and nongasoline aviation fuels (sec. 4093(d)).

Liberalized refund procedures

The committee was aware that, in some circumstances, exempt purchasers of diesel and nongasoline aviation fuels for States and local government and off-highway business use do not purchase these fuels from producers and thus will continue to purchase the

fuel tax-paid and claim refunds. This will occur, for example, where fuel is purchased from a retail dealer. For these persons, the bill liberalizes the refund procedures of present law. Under these new rules, States and local governments and off-highway business users [1] will be paid interest (at the regular deficiency rate) on refund claims they file.

Additionally, the bill liberalizes the tax threshold for quarterly (as opposed to annual) refunds. Under the bill, if an exempt user has paid $750 of the tax as of the end of any of the first three calender quarters, he or she may file for a refund for the entire amount of tax paid through the end of that quarter. This cumulative rule is in lieu of the present rule that the $1,000 threshold must be satisfied with respect to a single quarter. The minimum refund claim that may be filed under this rule is $750. Thus, if an exempt user files a claim for $750 of tax at the end of the second calendar quarter and incurs an additional $300 of tax in the third quarter, no claim for the third quarter may be filed until the end of the fourth calendar quarter.

Treasury registration and financial responsibility procedures

The bill requires the Treasury Department to issue initial rules providing registration and financial responsibility requirements to be satisfied by exempt users purchasing fuel without payment of tax before October 1, 1988.

Special one-time refunds

A special one-time refund is provided for off-highway business users authorized under the bill to purchase diesel fuel without payment of tax. This procedure permits these exempt users to file before January 1, 1989, a claim for refund of tax paid after March 31, 1988, and before October 1, 1988, regardless of the amount of tax involved. For these refunds only, interest will be determined at the short-term Federal rate, plus three percentage points rather than the regular deficiency rate.

Effective date

The provisions are generally effective for diesel fuel and nongasoline aviation fuels sold after September 30, 1988.

B. MODIFICATION OF DISTILLED SPIRITS WINE AND FLAVORS CREDIT (SEC. 204 OF THE BILL AND SEC. 5010 OF THE CODE)

Present law

A credit is allowed against the distilled spirits tax for the alcohol content of a taxable beverage that is derived from wine and/or flavor components (sec. 5010). The credit is equal to the difference between the distilled spirits tax rate ($12.50 per proof gallon under sec. 5001) and the lower, wine tax rate (under sec. 5041).

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[1] The term "off-highway" business user" does not include bus operators. Bus operators have always purchased fuel tax-paid, and refunds have been used as the method of realizing a partial or full exemption from the tax.

Reasons for change

According to the Bureau of Alcohol, Tobacco, and Firearms (BATF), use of the wine and flavorings credit has expanded beyond traditional wine flavoring situations. Some producers of distilled spirits beverages are using flavored alcohol in quantities substantially beyond any flavoring requirements of the beverages principally for the purpose of reducing the effective tax rate on the distilled spirits by means of the wine and flavorings credit. In certain cases, the flavoring component of the alcohol is even redistilled out of the beverage itself before bottling. BATF estimates that, in the average case, the credit is being used to reduce the effective tax rate on these distilled spirits products from $12.50 per proof gallon to around $8.00–$8.50 per proof gallon.

Explanation of provision

The bill limits the use of the wine credit to alcohol derived directly from wine and to a maximum of 2.5 percent of the alcohol content of the taxable distilled spirits beverage. In addition, the bill provides that the credit for other flavors is available only in those cases where the flavors are added to the distilled spirits beverage after completion of distillation.

Effective date

The provision is effective for distilled spirits removed after the date of enactment.

C. EXCEPTION FROM DISTILLED SPIRITS OCCUPATIONAL TAX FOR CERTAIN SMALL PLANTS (SEC. 205 OF THE BILL AND SEC. 5081 OF THE CODE)

Present law

An annual occupational tax of $1,000 per premise is imposed on each proprietor of a distilled spirits plant (sec. 5081). The tax is $500 a year for businesses with gross receipts of less than $500,000 in the preceding taxable year.[2] The new tax on distilled spirits plants was imposed as part of the Omnibus Budget Reconciliation Act of 1987, effective on January 1, 1988.[3] The annual tax also applies to wineries and breweries.[4]

Reasons for change

The committee learned that certain distilled spirits plants produce only small quantities of spirits exclusively for fuel uses and determined that an exemption for these producers is appropriate in light of the small amount of alcohol produced by them.

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[2] The taxable year for the annual occupational tax is July 1–June 30.

[3] Thus, the new tax for the January 1–June 30, 1988 period is generally $500 ($250 for the smaller business operations).

[4] Under prior law, the annual occupational tax on producers of alcoholic beverages only applied to breweries. The 1987 Act also increased prior law annual occupational taxes on wholesale and retail dealers of liquors, wines, and beer (secs. 5111 and 5121).

Explanation of provision

The bill exempts from the annual distilled spirits producer occupational tax such plants that (1) produce distilled spirits exclusively for fuel use and (2) produce no more than 10,000 proof gallons per year.

Effective date

The provision is effective as if included in the Omnibus Budget Reconciliation Act of 1987 (i.e., January 1, 1988).

D. INCREASE IN GAS GUZZLER EXCISE TAX (SEC. 206 OF THE BILL AND SEC. 4064 OF THE CODE)

Present law

The energy Tax Act of 1978 imposed an excise tax on automobiles that did not meet statutory standards for fuel economy. The amount of tax varies according to the fuel efficiency of a model of automobile. No gas guzzler tax is imposed if the fuel economy of the automobile model is at least 22.5 miles per gallon (as determined by the Environmental Protection Agency). For automobiles that do not meet that standard, the tax begins at $500 and increases to $3,850 for the automobile models that are the least fuel-efficient (sec. 4064 of the Code).

Reasons for change

The committee believes that it is appropriate to increase the level of the gas guzzler tax to provide an incentive for additional energy conservation. The commitee believes that this is consistent with the tax as originally enacted, which provided for substantial yearly increases in the fuel economy standards and rates of the tax. This was done each year from 1980 through 1986.

Explanation of provision

The bill doubles the tax rates on automobiles that do not meet the statutory standard for fuel economy. Thus, the tax will range from $1,000 to $7,700.

Effective date

The provision applies to automobiles sold by the manufacturer after September 30, 1988.

TITLE III.—MISCELLANEOUS PROVISION

Debt Collection: Extension of Program for IRS Collection of Nontax Debts Owed to Federal Agencies (sec. 301 of the bill and sec. 6402(d) of the Code)

Present law

Federal agencies are authorized to inform the IRS that a person (who has received proper notification from the agency) owes a past due, legally enforceable debt to the agency. The IRS then must reduce the amount of any tax refund due the person by the amount

of the debt and pay that amount to the agency. The refund offset applies to individuals and corporations. This program is scheduled to expire after June 30, 1988.[5]

Reasons for change

The committee believes that an extension of the debt collection provisions is appropriate so that the Federal Government can use every means available to collect debts owed to Federal agencies that the agencies have been unable to collect themselves.

The committee is concerned, however, about the possible negative effect of the debt collection program on voluntary tax compliance. Consequently, the committee believes that the extension should be for a one-year period at this time, which will provide Congress with an additional opportunity to assess the effect of the program on voluntary tax compliance.

Explanation of provision

The bill extends the Federal debt collection program for one year (i.e., the program will apply to refunds payable on or before June 30, 1989).

Effective date

The provision is effective on the date of enactment.

III. BUDGET EFFECTS OF THE BILL

In compliance with paragraph 11(a) of Rule XXVI of the Standing Rules of the Senate, the following statement is made relative to the estimated budget effect of the bill, as reported by the committee.

Revenue effects

The table below presents the estimated revenue effects of the provisions of the bill, as reported by the committee, for fiscal years 1988–1993.

REVENUE EFFECTS OF SENATE FINANCE COMMITTEE BILL AS REPORTED, FISCAL YEARS 1988–1993

[Millions of dollars]

Provision	1988	1989	1990	1991	1992	1993	1988–93
Title I.—Taxpayer Bill of Rights		−191	−88	−77	−79	−92	−517
Title II.—Excise Tax Provisions:							
A. Diesel fuel tax collection	(1)	−314	−64	−66	−66	−66	−576
B. Distilled spirits wine credit modification	8	57	63	70	77	85	360
C. Distilled spirits occupational tax exemption for certain small plants	(1)	(1)	(1)	(1)	(1)	(1)	(2)
D. Increase in gas guzzler excise tax		68	72	74	76	78	368
Title III.—Debt Collection Extension		400					400
Total revenue effect	8	20	−17	1	8	15	36

[1] Loss of less than $1 million.
[2] Loss of less than $5 million.

[5] In the Omnibus Budget Reconciliation Act of 1987, the debt collection program was extended for six months from December 31, 1987, to June 30, 1988, expanded to apply to refunds due corporations, and expanded to cover all Federal agencies.

IV. REGULATORY IMPACT AND OTHER MATTERS TO BE DISCUSSED UNDER SENATE RULES

A. REGULATORY IMPACT

Pursuant to paragraph 11(b) of Rule XXVI of the Standing Rules of the Senate, the committee makes the following statement concerning the regulatory impact that might be incurred in carrying out the bill as reported.

Impact on individuals and businesses

The bill provides statutory procedures relating to taxpayer rights, levies and liens, proceedings by taxpayers, and Tax Court jurisdiction. These provisions are intended to provide greater certainty to taxpayers in their dealings with the Internal Revenue Service. The bill includes a provision for Small Business Administration review of the impact of IRS regulations on small business.

The bill generally extends the current provisions for tax-free purchases of diesel and nongasoline aviation fuels to all off-highway business users for which an exemption is provided. Exempt users may purchase these fuels without payment of excise tax when they purchase directly from a producer (including a wholesale distributor) and when Treasury-prescribed registration and financial responsibility statements are satisfied. The bill also lowers the tax threshold for submitting fuels tax refunds.

Further, the bill modifies the distilled spirits wine and flavors credit, provides an exception from the annual distilled spirits occupational tax for certain small plants, and doubles the gas guzzler excise tax for automobiles not meeting the statutory fuel economy standards.

Finally, the bill extends the present-law program for IRS collection of nontax debts owed to Federal agencies for one year (through June 30, 1989).

Impact on personal privacy

The Taxpayer Bill of Rights provisions of the bill are intended to improve the rights of taxpayers in their dealings with the Internal Revenue Service. The bill modifies the levy and lien provisions to give taxpayers more time to respond adequately to these IRS actions. The bill grants taxpayers a civil cause of action for damages due to unreasonable action by the IRS.

The bill provides Tax Court jurisdiction to restrain the assessment and collection of any tax by the IRS that is the subject of a timely filed petition before the Tax Court. Also, the Tax Court is granted jurisdiction over tax refund actions against the IRS.

Impact on paperwork

The bill generally does not increase the amount of paperwork for taxpayers under the tax laws. The Taxpayer Bill of Rights provisions are intended to facilitate administrative dealings with the IRS and to provide additional information to taxpayers during the tax administrative process.

The bill requires producers selling diesel and nongasoline aviation fuel to an exempt user without payment of tax to submit to the Treasury Department (at least annually) a report on the sales volume to and names of such exempt users. The Treasury Department may also require exempt users to submit (at least annually) this information to the Treasury Department, certifying that all exempt purchases were for qualified exempt purposes. This submission by exempt users generally can be made by means of additional information included on currently required income tax returns.

The exception from the annual distilled spirits occuptional tax for certain small plants will eliminate the filing of the annual occupational tax return for such plants.

B. OTHER MATTERS

Consultation With Congressional Budget Office

Budget estimates.—In accordance with Section 403 of the Budget Act, the committee advises that the Congressional Budget Office has reviewed the committee budget estimates and agrees with estimates as presented in Part III of this report. The Congressional Budget Office had not submitted a written statement as of the time the report was filed.

Budget authority.—In compliance with section 308(a)(1) of the Budget Act, the committee states that the bill involves no new or increased budget authority.

Tax expenditures.—In compliance with section 308(a)(2) of the Budget Act, the committee states that the bill involves no new or increased tax expenditures.

Vote of the Committee

In compliance with paragraph 7(c) of Rule XXVI of the Standing Rules of the Senate, the following statement is made relative to the vote of the committee on the motion to report the provisions of the bill. The bill was ordered favorably reported by unanimous voice vote.

V. CHANGES IN EXISTING LAW MADE BY THE BILL

In the opinion of the committee, it is necessary in order to expedite the business of the Senate, to dispense withe the requirements of paragraph 12 of Rule XXVI of the Standing Rules of the Senate (relating to the showing of changes in existing law made by the provisions of the bill as reported by the committee).

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